

APPEAL NO. 010662

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 6, 2001. The hearing officer found that the appellant (claimant) injured his knee in the course and scope of employment on _____, but that he did not timely report his injury and therefore it was not compensable. He held that the claimant did not show good cause in failing to timely report his injury. Because the injury was not compensable, the claimant did not have "disability" as defined by the 1989 Act.

The claimant appeals, arguing that he was actually hurt on _____, not _____, and therefore timely reported his injury. He asked that benefits be found due. The respondent (carrier) responds by requesting affirmance. The carrier questions whether the decision was timely filed.

DECISION

We affirm the hearing officer's decision.

The claimant has timely filed his request for review. We do not agree that the hearing officer erred in finding that the claimant's true date of injury was _____, and that he therefore did not timely report it. The hearing officer was not required to believe the claimant's explanations for why he reported the date of injury as _____, until failure to timely report became an issue. The decision details some of the aspects of the claimant's testimony that the hearing officer did not find credible. While there was some evidence favorable to the claimant, we note that the hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ).

The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.- El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual

Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge